HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 21624 OF 2006

DATED: 14.12.2006

Between:

Billa Ramulu and another

… Petitioner

and

The Joint Collector, Nizamabad and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.21624 OF 2006

ORAL ORDER:

The petitioners assail the order of the 2nd respondent bearing File No. A3/2546/2004 dated 12.5.2005, as confirmed by the 1st respondent by the order bearing reference No.D2/12/2005 dated 11.5.2006.

Heard Sri A.V. Sivaiah, the learned counsel for the petitioners, the learned Government Pleader for Revenue for respondents 1 and 2 and Sri K. Vinaya Kumar, the learned counsel for respondents 3 to 9.

The 2nd respondent by the impugned order cancelled the patta recording the name of the petitioners for an extent of Ac.3.09 guntas each in Sy.Nos. 31/U and 32/A, Muthukunta village, Nizamabad District. The petitioners claim to be the owners and pattadars of the lands in question, having purchased the same under an unregistered sale deed in 1979 from one Billa Laxmaiah. According to the petitioners, the Mandal Revenue Officer concerned had issued pattadar passbooks and title deeds in favour of the petitioners, after due enquiry. The petitioners claim to be the owners; in peaceful

possession and occupation of the property in question. Petitioners further assert that when the respondents 3 to 9 tried to interfere with their peaceful possession on 18.1.2002, the first petitioner filed O.S.No.21 of 2002 on the file of the Principal Junior Civil Judge, Nizamabad, for injunctive relief. The 2nd petitioner similarly filed O.S.No.22 of 2002 before the same court. By a separate judgments dated 4.7.2005, the suits are said to have been decreed and perpetual injunction granted in favour of the plaintiff-petitioners against the respondents 3 to 9 herein.

Thereafter and despite the judgments of the civil court, the petitioners assert, the respondents 3 to 9 filed an application before the 2nd respondent claiming to be the joint owners of lands in an extent of Ac.3.09 guntas in Sy.No.32/U and Ac.3.09 guntas in Sy.No.32/A of the village. The 2nd respondent curiously and without there being an order of the MRO concerned under Section 3 (3) of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') and without any asserted or apparent jurisdiction, power or authority, passed the impugned order dated 12.5.2005.

In the entirety of discussion in the order dated 12.5.2005, there is not even a whisper by the 2nd respondent as to the source of his authority for passing the order. The learned Government Pleader for Revenue appearing for the respondents 1 and 2 fairly concedes that the order of the 2nd respondent dated 12.5.2005 is patently without jurisdiction and authority.

Aggrieved by the order dated 12.5.2005, the petitioners preferred a revision to the 1st respondent under Section 9 of the Act. The 1st respondent by the order dated 11.5.2006 in Case No.D2/12/2005 rejected the revision. The 1st respondent equally failed to address himself to the question whether the 2nd respondent had jurisdiction to pass the order dated 12.5.2005 in exercise of original jurisdiction. The 2nd respondent is the appellate authority under the provisions of the Act.

The learned Government Pleader for Revenue fairly concedes that the order of confirmation by the 1st respondent-appellate authority dated 11.5.2006 must fail for this error. The learned counsel for the respondents 3 to 9 is unable to place before this court any statutory or precedential authority for the exercise of ***sui generis*** jurisdiction by the 2nd respondent under the provisions of the Act. There is thus an equivocal but clear admittance even on behalf of the respondents 3 to 9 as to the jurisdictional incompetence of the 2nd respondent in passing the order dated 12.5.2005. The appellate order confirming an incompetent primary order must suffer the same consequence, invalidity.

Consequent on the analysis above, the order of the 2nd respondent dated 12.5.2005 in File No.A3/2546/2004, as confirmed by the 1st respondent by the order dated 11.5.2006 in File No.D2/12/2005, are quashed. They are declared ***non est*** and

inoperative.

The writ petition is allowed. Any party aggrieved is at liberty to pursue appropriate proceedings under the provisions of the Act. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 14.12.2006

Note: CC as soon as possible.
Bo cvm